

APPEAL NO. 160108
FILED MARCH 15, 2016

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 5, 2016,¹ in Houston, Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issue by deciding that attorney fees in the amount of \$975.00 are reasonable and necessary for services rendered from June 2 through June 26, 2015, in Sequence No. 22 and attorney fees in the amount of \$12.50 are to be deducted from fees awarded in Sequence No. 22 for date of service on June 26, 2015.

The appellant (claimant) appealed, arguing that some of the services listed in the requested fee application were not performed. The claimant additionally argues that some of the claimed fees were for supplemental income benefits (SIBs) quarters which have not been resolved and that the amount of \$975.00 was not a reasonable and necessary attorney fee. Respondent 1 (attorney) responded, requesting affirmance of the hearing officer's determination. The attorney argues that the claimant has failed to demonstrate the services for which fees were requested were not actually performed. Respondent 2 (self-insured) was "excused" from the CCH. The appeal file does not contain a response from the self-insured to the claimant's appeal.

That portion of the hearing officer's decision that attorney fees in the amount of \$12.50 are to be deducted from fees awarded in Sequence No. 22, for the date of service June 26, 2015, was not appealed and has become final pursuant to Section 410.169.

DECISION

Reversed and remanded.

The Texas Department of Insurance, Division of Workers' Compensation (Division) Order for Attorney's Fees (Order) for Sequence No. 22 approves 6.00 hours of attorney fees at \$150.00 an hour for an approved total of \$900.00 for services rendered by an attorney from June 2 through June 26, 2015. The Order for Sequence No. 22 additionally approves 1.75 hours of fees for services provided by a legal assistant at \$50.00 an hour for an approved total of \$87.50. We note that as previously discussed the amount of \$12.50 was deducted from fees awarded in Sequence No. 22 at the CCH and the portion of that decision has become final.

¹ We note the hearing officer mistakenly references the date of the CCH as January 5, 2015.

In the Decision and Order portion of her decision the hearing officer orders the self-insured to pay attorney, attorney fees in the amount of \$975.00. The order in evidence states that the attorney fees are to be paid only from the claimant's benefits. It is clear from the evidence that at least a portion of the fees requested represented services provided which were incurred in connection with either one or both of the first and second quarters of SIBs.

Section 408.147(c) and 28 TEX. ADMIN. CODE § 152.1(f) (Rule 152.1(f)) provide that an attorney for an employee who prevails when a carrier contests a Division determination of eligibility for SIBs shall be eligible to receive a reasonable and necessary attorney's fee, included expenses, which is payable by the carrier, not out of the employee's benefits and the fee shall not be limited to a maximum of 25% of the employee's recovery. The provisions of Rule 152.1(f) only apply to SIBs cases. See Appeals Panel Decision (APD) 061962, decided November 20, 2006. The Appeals Panel has held that where an adjudication of a SIBs dispute has resulted in a determination of entitlement to some quarters and non-entitlement to other quarters, the hearing officer entering the order on attorney's fees must allocate the fees amongst the different quarters in that the carrier is only liable for the portion of the fees attributable to the SIBs quarters to which it disputed the claimant's entitlement and on which the claimant later prevailed. See APD 052419 decided December 21, 2005, and APD 071433, decided November 26, 2007. No evidence was presented at the CCH regarding the status of the claimant's entitlement to the first and second SIBs quarters. No decision and order on attorney fees pertaining to SIBs should be issued until there has been a determination on SIBs for the first and second quarters.

The hearing officer's determination that attorney fees in the amount of \$975.00 are reasonable and necessary for services rendered from June 2 through June 26, 2015, in Sequence No. 22 is reversed and remanded to the hearing officer to await the determination on the first and second quarters of SIBs. The application for attorney fees should designate the fees for services rendered for SIBs by specific quarter and the services rendered for the other issues which are subject to the provisions of Rule 152.1(c) and the guidelines in Rule 152.4. The hearing officer should then make a determination of attorney's fees in accordance with the applicable statute and rules set forth in this decision.

Additionally, this case is remanded for the purpose of compliance with Section 410.164. See APD 050825, decided May 23, 2005. In this case, the carrier's information form providing the true corporate name of the insurance carrier and the name and address of the carrier's registered agent for service of process was in the hearing file but was not admitted as a hearing officer exhibit and the hearing officer failed to include this information in her decision and order. This case is remanded for

the hearing officer to include the carrier information in her decision and order on remand.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

**STEPHEN S. VOLLBRECHT, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
300 W. 15TH STREET
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR
AUSTIN, TEXAS 78701.**

For service by mail the address is:

**STEPHEN S. VOLLBRECHT, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
P.O. BOX 13777
AUSTIN, TEXAS 78711-3777.**

Margaret L. Turner
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Carisa Space-Beam
Appeals Judge